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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/530,167	04/24/2000	CLAUS GODER	352.1008	2203
23280	7590	12/14/2005		EXAMINER
DAVIDSON, DAVIDSON & KAPPEL, LLC 485 SEVENTH AVENUE, 14TH FLOOR NEW YORK, NY 10018				FARAH, AHMED M
			ART UNIT	PAPER NUMBER
			3735	

DATE MAILED: 12/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/530,167	GODER ET AL.
	Examiner	Art Unit
	Ahmed M. Farah	3735

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 25 November 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 21-38 and 43-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 43-45 and 50 is/are allowed.
- 6) Claim(s) 21-30,35-38,46-49 and 51 is/are rejected.
- 7) Claim(s) 31-34 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>11/25/2005</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 22-30, 35-38, 46-49 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Telfair et al. U.S. Patent No. 4,911,711 in view of James et al. U.S. Patent No. 5,463,200.

Telfair et al. disclose ophthalmic surgery apparatus for reshaping the surface/curvature of the cornea to correct vision defects, the surgical apparatus comprising:
a pulsed excimer laser 11;
a beam deflecting device 25 (Col. 4, line 34), through which the laser beam is guided over the surface of the eye 13., and
an optical element 22 for changing/altering the distribution of the radiation intensity inside the laser beam cross-section, the optical element 22 including at least one optical device (trap 21) with optically active structure, wherein the optically active structure influences the intensity distribution of the laser beam cross-section in such a way that the laser beam, after passing through optical element 22, has a Gaussian intensity distribution (see Col. 3, line 47 to Col. 4, line 17).

In reference to claim 23, trap 21 of Telfair et al. is provided with a diffractive and/or refractive optically active structure. As shown in Fig. 2, trap 21 is introduced into

or removed from the path of the laser beam.

In reference to claims 24-27, the invention of Telfair et al. is directed to methods for shaping and homogenizing the intensity inside the cross-section of a rectangular laser pulse from ultraviolet excimer laser so as to produce a circular laser beam with a Gaussian intensity distribution that is suitable for reshaping the cornea (see claim 1 and the abstract).

In reference to claims 28-32, the surgical apparatus of Telfair et al. comprises a plurality of optical elements including: optical elements (filters 24), which are arranged on a movable carrier (rotatable wheel 56),. a rotatable disc 66, which is placed in the optical path of the laser beam so as to influence the size of the spot area directed on the cornea; and a computer 30, which controls the functions of the optical elements. In reference to claims 33 and 34, the computer 30 of Telfair et al. is coupled to a surface diagnostics device 17, and thereby detects the actual values/curvature of the corneal surface.

However, although the optical device (trap 21) is optically active in the micron range and modifies the cross section and intensity of the laser beam, Telfair et al. do not clearly teach the trap 21 is/has a microoptically active structure.

Nevertheless, as admitted by the applicants, the use of microoptics to alter/change energy distribution of a light beam is well known in the art (see the paragraph bridging pages 11 and 12 of the applicants' amendment/remarks section, filed on November 25, 2005). James et al disclose a system and methods of use for micro-machining a work piece by optical energy, the system comprising micro-

optically active structure (microlens 16) adapted for influencing the distribution of the radiation intensity inside the laser beam cross-section.

Therefore, since the device of Telfair et al. modifies the cross section and the intensity of the laser beam, it would have been obvious to one skilled in the art at the time of the applicants' invention to modify Telfair et al. with James et al to use a microoptically active element as an equivalent alternative element in order to modify the cross section and the intensity of the laser beam as presently claimed. As to claims 35-38, the apparatus of Telfair et al. in view of James et al would provide the methods as claimed.

Allowable Subject Matter

Claims 43-45 and 50 are allowed.

Claims 31-34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahmed M. Farah whose telephone number is (571) 272-4765. The examiner can normally be reached on Mon-Thur. 9:30 AM-7:30 PM, and 9:30 AM - 6:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ali Imam can be reached on (571) 272-4737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ahmed M Farah
Primary Examiner
Art Unit 3735

December 11, 2005.

